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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/981,502	10/17/2001	Armin Herb	DT-5029	6907
30377	7590	07/20/2005	EXAMINER	
DAVID TOREN, ESQ. ABELMAN FRAYNE & SCHWAB 666 THIRD AVENUE NEW YORK, NY 10017-5621			SAETHER, FLEMMING	
			ART UNIT	PAPER NUMBER
			3677	

DATE MAILED: 07/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/981,502

Applicant(s)

HERB, ARMIN

Examiner

Flemming Saether

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3 and 5-11 is/are pending in the application.
- 4a) Of the above claim(s) 5,6 and 8-10 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11 is/are allowed.
- 6) ☒ Claim(s) 1,3,7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Election/Restriction

Claims 5-7, 9 and 10 remain withdrawn.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 3 and 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, the last line, it is unclear how the engagement points could be extending through openings. Engagement points are specific location and as such could be extending through an opening.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Onishi (US 5,769,365) in view of Kennedy (US 4,116,104). Again looking at Figs. 12, Onishi discloses an attachment device comprising an anchoring unit (3) comprising two preloaded against one another (at 7) gripping members (3A) for engagement with

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retaining projections (41) of a mounting rail (4) and, a bolt (2). As seen in the longitudinal direction of the mounting rail, the gripping members include V-shaped retaining projections (31). Onishi does not disclose a receiving member having walls in the longitudinal direction of the channel. Kennedy discloses an attachment device including a receiving member (10) having walls (shown at aperture 14) having openings defined between the fingers (16, 18 and 22, 24). At the time the invention was made, it would have been obvious for one of ordinary skill in the art to provide the device of Onishi with a receiving member as disclosed in Kennedy in order to provide better support and guiding of the gripping members. The receiving member as disclosed in Kennedy provides for opposed guide slots (20, 26) which would be advantageous over the single side guide slot (124) currently used in Onishi. Once the combination was made, the walls would be parallel to the longitudinal direction of the mounting rail.

Allowable Subject Matter

Claim 11 is allowed.

Response to Remarks

Applicant argues the claims define over combination of Onishi and Kennedy initially because Kennedy "is not particularly relevant". In response, the examiner agree that Kennedy is from a different field of endeavor however, the examiner believes it to be somewhat relevant because both Onishi and Kennedy are concerned with a

fastening device having gripping members which expand to engage a blind surface located opposite an exposed surface. Furthermore, the above rejection is relying on Kennedy only for the "receiving member" and not for the anchoring member and in that regard it is only relied upon for the anchoring member having a second wall since a first wall is already disclosed in Onishi.

Applicant next argues that even if Kennedy were relevant, the combination of Onishi and Kennedy would not result in the claimed structure since it would lack the "receiving member with a plurality of guide openings, with the anchoring wall having engaging points with the retaining portion which extend through the respective openings". In response, as noted above, it is unclear what is intended by the engagement points extending through the openings since a point cannot extend through an opening. Therefore, since the limitation is unclear, the examiner cannot make a meaningful rebuttal.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

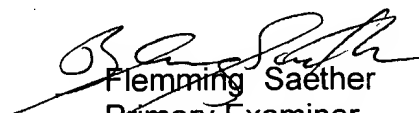
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Flemming Saether whose telephone number is 571-272-7071. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Swann can be reached on 571-272-7075. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Flemming Saether
Primary Examiner
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